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HOUSE BILL 165

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Rory J. Ogle

AN ACT

RELATING TO CIVIL COMMITMENT; PROVIDING FOR THE INVOLUNTARY
CIVIL COMMITMENT OF SEXUAL PREDATORS; ENACTING THE SEXUAL
PREDATOR CIVIL COMMITMENT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Sexual Predator Civil Commitment Act".

Section 2. LEGISLATIVE FINDINGS. -- The legislature finds
that:

A. there exists an extremely dangerous group of
sexually violent predators who have a mental abnormality or
personality disorder and who are likely to engage in repeat
acts of sexual violence if not treated for their mental
abnormality or personality disorder;

B. because the existing civil commitment procedures

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1 are inadequate to address the special needs of sexually violent
2 predators and the risks they present to society, a separate
3 involuntary civil commitment process for the potentially long-
4 term care, treatment and control of sexually violent predators
5 is necessary; and

6 C. because of the nature of the mental
7 abnormalities or personality disorders from which sexually
8 violent predators suffer, and the dangers they present, it is
9 necessary to house involuntarily committed sexually violent
10 predators in an environment separate from persons otherwise
11 involuntarily committed.

12 Section 3. DEFINITIONS.--As used in the Sexual Predator
13 Civil Commitment Act:

14 A. "agency with jurisdiction" means the agency that
15 releases upon lawful order or authority a person serving a
16 sentence or term of confinement and includes the corrections
17 department, the department of health and the children, youth
18 and families department;

19 B. "committed person" means a person who has been
20 found to be a sexually violent predator and committed to the
21 custody of the department, whether in a secure commitment
22 facility, a transitional release program or a conditional
23 release program;

24 C. "department" means the department of health;

25 D. "likely to engage in repeat acts of sexual

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1 violence" means that the person's propensity to commit sexually
2 violent offenses is of such a degree as to pose a menace to the
3 health and safety of others and that the person has a serious
4 difficulty in controlling his behavior;

5 E. "mental abnormality" means a congenital or
6 acquired condition affecting the emotional or volitional
7 capacity that predisposes a person to commit sexually violent
8 offenses in a degree constituting the person a menace to the
9 health and safety of others;

10 F. "potential predator" means a person who is a
11 potential or actual subject of proceedings pursuant to the
12 Sexual Predator Civil Commitment Act;

13 G. "secretary" means the secretary of health;

14 H. "sexual motivation" means that one of the
15 purposes for which a defendant committed a crime was for the
16 purpose of the defendant's sexual gratification;

17 I. "sexually violent offense" means:

18 (1) criminal sexual penetration, as described
19 in Section 30-9-11 NMSA 1978;

20 (2) sexual exploitation of children, as
21 described in Section 30-6A-3 or 30-6A-4 NMSA 1978;

22 (3) criminal sexual contact in the fourth
23 degree, as described in Subsection C of Section 30-9-12 NMSA
24 1978;

25 (4) criminal sexual contact of a minor, as

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1 described in Section 30-9-13 NMSA 1978;

2 (5) incest, as described in Section 30-10-3
3 NMSA 1978;

4 (6) aggravated indecent exposure, as described
5 in Section 30-9-14.3 NMSA 1978;

6 (7) child luring, as described in Subsection B
7 of Section 30-37-3.2 NMSA 1978;

8 (8) an attempt as described in Section 30-28-1
9 NMSA 1978, conspiracy as described in Section 30-28-2 NMSA 1978
10 or criminal solicitation as described in Section 30-28-3 NMSA
11 1978 of an offense described in Paragraphs (1) through (7) of
12 this subsection;

13 (9) any conviction for a felony offense in
14 effect at any time prior to the effective date of the Sexual
15 Predator Civil Commitment Act that is comparable to an offense
16 described in Paragraphs (1) through (8) of this subsection or
17 any federal or other state conviction for a felony offense
18 that, if committed in this state, would be a sexually violent
19 offense pursuant to Paragraphs (1) through (8) of this
20 subsection; or

21 (10) any crime, except those described in
22 Paragraphs (1) through (9) of this subsection, that either at
23 the time of sentencing for the offense or subsequently during
24 civil commitment proceedings pursuant to the Sexual Predator
25 Civil Commitment Act, has been determined beyond a reasonable

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1 doubt to have been sexually motivated;

2 J. "sexually violent predator" means a person who
3 has been convicted of or charged with a sexually violent
4 offense and who suffers from a mental abnormality or
5 personality disorder that makes the person likely to engage in
6 repeat acts of sexual violence and who has a serious difficulty
7 in controlling his behavior;

8 K. "transitional release" means any halfway house,
9 work release or other placement designed to assist the person's
10 adjustment and reintegration into the community once released
11 from commitment; and

12 L. "treatment staff" means the persons, agencies or
13 firms employed by or contracted with the secretary to provide
14 treatment, supervision or other services for committed persons.

15 Section 4. NOTICE OF RELEASE OF POTENTIAL PREDATOR--
16 EVALUATION BY MULTI-DISCIPLINARY TEAM AND ATTORNEY GENERAL. --

17 A. When it appears to an agency with jurisdiction
18 that a person may be a sexually violent predator, the agency
19 shall give written notice to the attorney general and the
20 multi-disciplinary team established in Subsection C of this
21 section. The notice shall be given no less than ninety days
22 prior to:

23 (1) the anticipated release from total
24 confinement of a person who has been convicted of a sexually
25 violent offense, except that in the case of persons who are

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1 returned to confinement for no more than ninety days as a
2 result of revocation of parole or other post-release
3 supervision, written notice shall be given as soon as
4 practicable following the person's readmission to confinement;

5 (2) the release of a person who has been
6 charged with a sexually violent offense and who has been
7 determined to be incompetent to stand trial; or

8 (3) the release of a person who has been found
9 not guilty by reason of insanity of a sexually violent offense.

10 B. The agency with jurisdiction shall inform the
11 attorney general and the multi-disciplinary team of the
12 following:

13 (1) the potential predator's name, identifying
14 factors, anticipated future residence and offense history; and

15 (2) documentation of institutional adjustment
16 and any treatment received.

17 C. The secretary of corrections shall establish a
18 multi-disciplinary team, which may include individuals from
19 other state agencies, to review available records of each
20 person referred to the team pursuant to Subsection A of this
21 section. The team, within thirty days of receiving notice,
22 shall assess whether the potential predator is a sexually
23 violent predator. The team shall notify the attorney general
24 of its assessment.

25 D. The attorney general shall appoint a

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1 prosecutor's review committee to review the records of each
2 person referred to the attorney general pursuant to Subsection
3 A of this section. The prosecutor's review committee shall
4 assist the attorney general in the determination of whether the
5 person is a sexually violent predator. The assessment of the
6 multi-disciplinary team shall be made available to the attorney
7 general and the prosecutor's review committee.

8 E. The agency with jurisdiction and its employees
9 and officials, members of the multi-disciplinary team, members
10 of the prosecutor's review committee and individuals
11 contracting, appointed or volunteering to perform services
12 pursuant to this section shall be immune from liability for any
13 good-faith conduct under this section.

14 F. The provisions of this section are not
15 jurisdictional, and failure to comply with its provisions does
16 not prevent the attorney general from proceeding against a
17 person otherwise subject to commitment pursuant to the Sexual
18 Predator Civil Commitment Act.

19 Section 5. PETITION FOR COMMITMENT. --

20 A. Upon a determination by the attorney general and
21 the prosecutor's review committee pursuant to Section 4 of the
22 Sexual Predator Civil Commitment Act that a potential predator
23 is a sexually violent predator, the attorney general may file a
24 petition with the district court, within seventy-five days of
25 the date the attorney general received the written notice by

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1 the agency of jurisdiction as provided in Subsection A of
2 Section 4 of the Sexual Predator Civil Commitment Act, alleging
3 that the person is a sexually violent predator and stating
4 sufficient facts to support the allegation.

5 B. The provisions of this section are not
6 jurisdictional, and failure to comply with its provisions in no
7 way prevents the attorney general from proceeding against a
8 person otherwise subject to the provisions of the Sexual
9 Predator Civil Commitment Act.

10 Section 6. DETERMINATION OF PROBABLE CAUSE. --

11 A. Upon filing of a petition pursuant to Section 5
12 of the Sexual Predator Civil Commitment Act, the district court
13 shall determine whether probable cause exists to believe that
14 the potential predator is a sexually violent predator. If the
15 court determines that probable cause exists, the court shall
16 direct that the potential predator be taken into custody.

17 B. Within seventy-two hours after a potential
18 predator is taken into custody pursuant to Subsection A of this
19 section, the potential predator shall be provided with notice
20 of, and an opportunity to appear in person at, a hearing to
21 contest probable cause as to whether the potential predator is
22 a sexually violent predator. At the hearing, the court shall:

23 (1) verify the potential predator's identity;

24 and

25 (2) determine whether probable cause exists to

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1 believe that the potential predator is a sexually violent
2 predator. The state may rely upon the petition or supplement
3 the petition with additional documentary evidence or live
4 testimony.

5 C. At the probable cause hearing, the potential
6 predator has the following rights in addition to the rights
7 previously specified:

8 (1) to be represented by counsel;

9 (2) to present evidence on the potential
10 predator's behalf;

11 (3) to cross-examine witnesses who testify
12 against the potential predator; and

13 (4) to view and copy all petitions and reports
14 in the court file.

15 D. If the court determines that there is probable
16 cause that the potential predator is a sexually violent
17 predator, the court shall direct that the potential predator be
18 transferred to a county jail or other appropriate secure
19 facility for an evaluation as to whether the potential predator
20 is a sexually violent predator. The evaluation shall be
21 conducted by a person, appointed by the court, deemed to be
22 professionally qualified to conduct the examination.

23 Section 7. TRIAL--PROCEDURE. --

24 A. Within sixty days after the completion of a
25 hearing held pursuant to Section 6 of the Sexual Predator Civil

1 Commitment Act, the court shall conduct a trial to determine
2 whether the person is a sexually violent predator. The trial
3 may be continued upon the request of either party and a showing
4 of good cause, or by the court on its own motion in the due
5 administration of justice, and when the potential predator will
6 not be substantially prejudiced.

7 B. At all stages of the proceedings under the
8 Sexual Predator Civil Commitment Act, any person subject to
9 that act shall be entitled to the assistance of counsel, and if
10 the person is indigent, the court shall appoint counsel to
11 assist the person.

12 C. Whenever any person is subjected to an
13 examination under the Sexual Predator Civil Commitment Act, the
14 person may retain experts or professional persons to perform an
15 examination on the person's behalf. When the person wishes to
16 be examined by a qualified expert or professional person of the
17 person's own choice, the examiner may have reasonable access to
18 the person for the purpose of the examination, as well as to
19 all relevant medical and psychological records and reports.

20 D. In the case of a potential predator who is
21 indigent, the court, upon the potential predator's request,
22 shall determine whether the services are necessary and if
23 compensation for the services is reasonable. If the court
24 determines that the services are necessary and the expert or
25 professional person's requested compensation for such services

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1 is reasonable, the court shall assist the potential predator in
2 obtaining an expert or professional person to perform an
3 examination or participate in the trial on the potential
4 predator's behalf. The court shall approve payment for such
5 services upon the filing of a certified claim for compensation
6 supported by a written statement specifying the time expended,
7 services rendered, expenses incurred on behalf of the potential
8 predator and compensation received in the same case or for the
9 same services from any other source.

10 E. The potential predator, the attorney general or
11 the court may demand that the trial be before a jury. A demand
12 for a jury trial shall be filed, in writing, at least four days
13 prior to trial. A jury shall consist of twelve jurors unless
14 the parties agree in writing with the approval of the court
15 that the jury shall consist of any number of jurors less than
16 twelve. If no demand is made, the trial shall be before the
17 court without a jury.

18 Section 8. TRIAL--DETERMINATION--COMMITMENT PROCEDURE.--

19 A. In a trial conducted pursuant to Section 7 of
20 the Sexual Predator Civil Commitment Act, the court or jury
21 shall determine whether, beyond a reasonable doubt, the
22 potential predator is a sexually violent predator; provided
23 that if the determination is made by a jury, it shall be by
24 unanimous verdict. If the court or jury determines that the
25 person is a sexually violent predator, the person shall be

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1 committed to the custody of the secretary for care, treatment
2 and control until such time as the committed person's mental
3 abnormality or personality disorder has so changed that the
4 person is safe to be at large. The care, treatment and control
5 shall be provided at a facility operated by the department. At
6 all times, a committed person committed for care, treatment and
7 control by the department shall be kept in a secure facility
8 and shall be segregated at all times from other patients under
9 the supervision of the secretary. The department may enter
10 into an agreement with the corrections department for the
11 confinement of sexually violent predators. Sexually violent
12 predators who are in the confinement of the corrections
13 department pursuant to an agreement shall be housed and managed
14 separately from offenders in the custody of the corrections
15 department, and except for occasional instances of supervised
16 incidental contact, shall be segregated from such offenders.

17 B. If a committed person, while committed to the
18 custody of the secretary pursuant to the Sexual Predator Civil
19 Commitment Act, is taken into custody by any law enforcement
20 officer for any parole revocation proceeding or any arrest or
21 conviction for a criminal offense of any nature, upon release
22 from the custody of the law enforcement officer, the sexually
23 violent predator shall be returned to the custody of the
24 secretary for further treatment pursuant to the Sexual Predator
25 Civil Commitment Act. During any period of time a committed

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1 person is not in the actual custody or supervision of the
2 secretary, the secretary shall be excused from the provisions
3 of Section 9 of the Sexual Predator Civil Commitment Act. The
4 secretary shall give notice to the court as soon as reasonably
5 possible after the taking of the committed person into custody
6 that the committed person is no longer in treatment pursuant to
7 the Sexual Predator Civil Commitment Act, and notice to the
8 court when the committed person is returned to the custody of
9 the secretary for further treatment.

10 C. If the court or jury is not satisfied beyond a
11 reasonable doubt that the person is a sexually violent
12 predator, the court shall direct the person's release.

13 D. Upon a mistrial, the court shall direct that the
14 person be held at a county jail or other appropriate secure
15 facility until another trial is conducted. Any subsequent
16 trial following a mistrial shall be held within ninety days of
17 the previous trial, unless the subsequent trial is continued as
18 provided in Section 7 of the Sexual Predator Civil Commitment
19 Act.

20 E. If the potential predator charged with a
21 sexually violent offense has been found incompetent to stand
22 trial, and the potential predator's commitment is sought
23 pursuant to this section, the judge or jury shall first hear
24 evidence and determine whether the person did commit the act or
25 acts charged. The hearing on this issue shall comply with all

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1 the procedures specified in Section 7 of the Sexual Predator
2 Civil Commitment Act and this section. In addition, the rules
3 of evidence applicable in criminal cases shall apply, and all
4 constitutional rights available to defendants at criminal
5 trials, other than the right not to be tried while incompetent,
6 shall apply. After hearing evidence on the issue, the judge or
7 jury shall make specific findings on whether the potential
8 predator did commit the act or acts charged, the extent to
9 which the person's incompetence or developmental disability
10 affected the outcome of the hearing, including its effect on
11 the person's ability to consult with and assist counsel and to
12 testify on the person's own behalf, the extent to which the
13 evidence could be reconstructed without the assistance of the
14 person and the strength of the prosecution's case. If after
15 the conclusion of the hearing on this issue, the judge or jury
16 finds, beyond a reasonable doubt, that the person did commit
17 the act or acts charged, the court shall enter a final order,
18 appealable by the person on that issue, and may proceed to
19 consider whether the person should be committed pursuant to
20 this section.

21 F. Any determination that a person is a sexually
22 violent predator pursuant to this section may be appealed;
23 provided that the potential predator shall not be entitled to
24 release pending the appeal.

25 Section 9. ANNUAL EXAMINATION AND REVIEW. --

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1 A. Each person committed under the Sexual Predator
2 Civil Commitment Act shall have a current examination of the
3 committed person's mental condition made once every year. The
4 person may retain, or if the person is indigent and so
5 requests, the court may appoint a qualified professional to
6 examine the person, and the professional shall have access to
7 all records concerning the committed person. The annual report
8 shall be provided to the court that committed the person, and
9 the court shall conduct an annual review of the status of the
10 committed person. Nothing contained in the Sexual Predator
11 Civil Commitment Act prohibits the committed person from
12 otherwise petitioning the court for discharge at this hearing.
13 The secretary shall provide the committed person with an annual
14 written notice of the committed person's right to petition the
15 court for release over the secretary's objection. The notice
16 shall contain a waiver of rights. The secretary shall forward
17 the notice and waiver form to the court with the annual report.
18 The committed person shall have a right to have an attorney
19 represent the person at the hearing, but the committed person
20 is not entitled to be present at the hearing.

21 B. If the committed person has petitioned the court
22 for release and if, after reviewing the annual report and the
23 information contained in the petition, the court at the hearing
24 determines that probable cause exists to believe that the
25 person's mental abnormality or personality disorder has so

1 changed that the person is safe to be placed in transitional
2 release, then the court shall set a hearing on the issue. At
3 the hearing for transitional release, the committed person
4 shall be entitled to be present and entitled to the benefit of
5 all constitutional protections that were afforded the committed
6 person at the initial commitment trial. The attorney general
7 shall represent the state and may have the committed person
8 evaluated by experts chosen by the state. The committed person
9 may also have experts evaluate the committed person on the
10 committed person's behalf, and the court shall appoint an
11 expert if the committed person is indigent and requests an
12 appointment. Either party may demand a jury trial. The burden
13 of proof at the hearing shall be upon the state to prove beyond
14 a reasonable doubt that the committed person's mental
15 abnormality or personality disorder remains such that the
16 person is not safe to be placed in transitional release and if
17 placed in transitional release is likely to engage in acts of
18 sexual violence.

19 C. If, after the hearing, the court or jury is
20 convinced beyond a reasonable doubt that the person is not
21 appropriate for transitional release, the court shall order
22 that the person remain in secure commitment. Otherwise, the
23 court shall order that the person be placed in transitional
24 release and the secretary shall transfer the person to the
25 transitional release program.

1 Section 10. PETITION FOR TRANSITIONAL RELEASE--

2 PROCEDURE. --

3 A. If the secretary determines that a committed
4 person's mental abnormality or personality disorder has so
5 changed that the person is not likely to commit predatory acts
6 of sexual violence if placed in transitional release, the
7 secretary shall authorize the committed person to petition the
8 court for transitional release. The petition shall be served
9 upon the court and the attorney general. The court, upon
10 receipt of the petition for transitional release, shall order a
11 hearing within thirty days. The attorney general shall
12 represent the state, and may have the committed person examined
13 by an expert or professional of the attorney general's choice.
14 The hearing shall be before a jury if demanded by either the
15 committed person or the attorney general. The burden of proof
16 shall be upon the attorney general to show beyond a reasonable
17 doubt that the committed person's mental abnormality or
18 personality disorder remains such that the committed person is
19 not safe to be at large and that if placed in transitional
20 release is likely to commit predatory acts of sexual violence.

21 B. If, after the hearing, the court is convinced
22 beyond a reasonable doubt that the committed person is not
23 appropriate for transitional release, the court shall order
24 that the person remain in secure commitment. Otherwise, the
25 court shall order that the person be placed in transitional

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1 release and the secretary shall transfer the person to the
2 transitional release program.

3 Section 11. TRANSITIONAL RELEASE. --

4 A. The secretary may contract for services to be
5 provided in the transitional release program. During any
6 period the committed person is in transitional release, the
7 person shall comply with any rules the secretary may establish
8 for the program and every directive of the treatment staff of
9 the transitional release program.

10 B. At any time during which the committed person is
11 in the transitional release program and the treatment staff
12 determines that the committed person has violated any rule or
13 directive associated with the transitional release program, the
14 treatment staff may remove the person from the transitional
15 release program and return the person to the secure commitment
16 facility, or may request the district court to issue an
17 emergency ex parte order directing any law enforcement officer
18 to take the person into custody and return the person to the
19 secure commitment facility. Any such request may be made
20 verbally or by telephone, but shall be followed in written or
21 facsimile form delivered to the court by not later than 5:00
22 p.m. of the first day the district court is open for the
23 transaction of business after the verbal or telephonic request
24 was made.

25 C. Upon the committed person being returned to the

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1 secure commitment facility from the transitional release
2 program, notice thereof shall be given by the secretary to the
3 court. The court shall set the matter for a hearing within two
4 working days of receipt of notice of the person's having been
5 returned to the secure commitment facility and cause notice
6 thereof to be given to the attorney general, the committed
7 person and the secretary. The attorney general shall have the
8 burden of proof to show probable cause that the person violated
9 conditions of transitional release. The hearing shall be heard
10 by the court, without a jury. At the conclusion of the hearing
11 the court shall issue an order returning the person to the
12 secure commitment facility or to the transitional release
13 program, and may order such other further conditions with which
14 the person must comply if the person is returned to the
15 transitional release program.

16 Section 12. CONDITIONAL RELEASE. --

17 A. During any period the committed person is in
18 transitional release, the person at least annually, and at any
19 other time deemed appropriate by the treatment staff, shall be
20 examined by the treatment staff to determine if the person's
21 mental abnormality or personality disorder has so changed so as
22 to warrant the person being considered for conditional release.
23 The treatment staff shall forward a report of its examination
24 to the court. After reviewing the report, if the court
25 determines that probable cause exists to believe that the

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1 person's mental abnormality or personality disorder has so
2 changed that the person is safe to be placed in conditional
3 release, the court shall then set a hearing on the issue. The
4 attorney general shall have the burden of proof to show beyond
5 a reasonable doubt that the person's mental abnormality or
6 personality disorder remains such that the person is not safe
7 to be at large and that if placed on conditional release is
8 likely to engage in repeat acts of sexual violence. The person
9 shall have the same rights as enumerated in Section 7 of the
10 Sexual Predator Civil Commitment Act. Subsequent to either a
11 court review or a hearing, the court shall issue an appropriate
12 order with findings of fact. The order of the court shall be
13 provided to the attorney general, the person and the secretary.

14 B. If, after the hearing, the court is convinced
15 beyond a reasonable doubt that the person is not appropriate
16 for conditional release, the court shall order that the person
17 remain either in secure commitment or in transitional release.
18 Otherwise, the court shall order that the person be placed on
19 conditional release.

20 Section 13. CONDITIONAL RELEASE--PLAN OF TREATMENT--
21 HEARING FOR FINAL RELEASE. --

22 A. If, after a hearing conducted pursuant to
23 Section 12 of the Sexual Predator Civil Commitment Act, the
24 court determines that the committed person should be placed on
25 conditional release, the court, based upon the recommendation

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1 of the treatment staff, shall establish a plan of treatment
2 that the person shall be ordered to follow. The plan of
3 treatment may include:

4 (1) provisions as to where the committed
5 person shall reside and with whom; and

6 (2) requirements for taking prescribed
7 medications, attending individual and group counseling,
8 maintaining employment, having no contact with children, not
9 frequenting facilities, locations, events or otherwise in which
10 children are likely to be present and not engaging in
11 activities in which contact with children is likely.

12 B. Upon a showing by the committed person that the
13 person accepts the plan of treatment and is prepared to follow
14 it, the court shall release the person from the transitional
15 release program.

16 C. After a minimum of five years have passed in
17 which the committed person has been free of violations of
18 conditions of the person's treatment plan, the treatment staff
19 or other professionals directed by the court may examine the
20 person to determine if the person's mental abnormality or
21 personality disorder has changed so as to warrant being
22 considered for final discharge. The report shall be forwarded
23 to the court. After reviewing the report, if the court
24 determines that probable cause exists to believe that the
25 person's mental abnormality or personality disorder has so

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1 changed that the person is safe to be entitled to final
2 discharge, the court shall set a formal hearing on the issue.
3 The attorney general shall have the burden of proof to show
4 beyond a reasonable doubt that the person's mental abnormality
5 or personality disorder remains such that such person is not
6 appropriate for final discharge. The person shall have the
7 same rights as enumerated in Section 7 of the Sexual Predator
8 Civil Commitment Act. Subsequent to either a court review or a
9 hearing, the court shall issue an appropriate order with
10 findings of fact. The order of the court shall be provided to
11 the attorney general, the committed person and the secretary.

12 D. If, after a hearing, the court is convinced
13 beyond a reasonable doubt that the committed person is not
14 appropriate for final discharge, the court shall continue
15 custody of the person with the secretary for placement in a
16 secure commitment facility, transitional release program or
17 conditional release program. Otherwise, the court shall order
18 the person finally discharged. In the event the court does not
19 order final discharge of the person, the committed person still
20 retains the right to annual reviews.

21 E. At any time during which the committed person is
22 on conditional release and the professional designated by the
23 court in the treatment plan to monitor the person's compliance
24 with the plan determines that the person has violated any
25 material condition of that plan, the professional may request

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1 the district court to issue an emergency ex parte order
2 directing any law enforcement officer to take the committed
3 person into custody and return the person to the secure
4 commitment facility. Any such request may be made verbally or
5 by telephone, but shall be followed in written or facsimile
6 form delivered to the court by not later than 5:00 p.m. of the
7 first day the district court is open for the transaction of
8 business after the verbal or telephonic request was made.

9 F. Upon the committed person being returned to the
10 secure commitment facility from conditional release, notice
11 thereof shall be given by the secretary to the court. The
12 court shall set the matter for a hearing within two working
13 days of receipt of notice of the person's having been returned
14 to the secure commitment facility and cause notice thereof to
15 be given to the attorney general, the committed person and the
16 secretary. The attorney general shall have the burden of proof
17 to show probable cause that the person violated conditions of
18 conditional release. The hearing shall be to the court,
19 without a jury. At the conclusion of the hearing the court
20 shall issue an order returning the person to the secure
21 commitment facility, to the transitional release program or to
22 conditional release, and may order such other further
23 conditions with which the person must comply if the person is
24 returned to either the transitional release program or to
25 conditional release.

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1 G. The final discharge shall not prevent the person
2 from being prosecuted for any criminal acts that the person is
3 alleged to have committed or from being subject in the future
4 to a subsequent commitment under the Sexual Predator Civil
5 Commitment Act.

6 Section 14. NOTICE TO VICTIMS OF THE RELEASE OF A
7 COMMITTED PERSON. --

8 A. In addition to any other information required to
9 be released under the Sexual Predator Civil Commitment Act,
10 prior to the release of a person committed under that act, the
11 secretary shall give written notice of such placement or
12 release to any victim of the person's activities or crime whose
13 address is known to the secretary; provided that failure to
14 notify shall not be a reason for postponement of release.

15 B. Nothing in this section shall create a cause of
16 action against the state or an employee of the state acting
17 within the scope of the employee's employment as a result of
18 the failure to notify pursuant to this action.

19 Section 15. RIGHT OF COMMITTED PERSON TO PETITION. --
20 Nothing in the Sexual Predator Civil Commitment Act shall
21 prohibit a committed person from filing a petition for
22 transitional release, conditional release or final discharge
23 pursuant to the provisions of that act; provided that, if a
24 person has previously filed a petition for transitional
25 release, conditional release or final discharge without the

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1 secretary's approval and the court determined either upon
2 review of the petition or following a hearing, that the
3 petition was frivolous or that the committed person's condition
4 had not so changed that the person was safe to be at large,
5 then the court shall deny the subsequent petition unless it
6 contains facts upon which a court could find the condition of
7 the committed person had so changed that a hearing was
8 warranted. Upon receipt of a first or subsequent petition from
9 a committed person without the secretary's approval, the court
10 shall endeavor whenever possible to review the petition and
11 determine if the petition is based upon frivolous grounds and
12 if so shall deny the petition without a hearing.

13 Section 16. CONSTITUTIONAL PROTECTIONS. --The involuntary
14 detention or commitment of persons under the Sexual Predator
15 Civil Commitment Act shall conform to all constitutional
16 requirements for care and treatment.

17 Section 17. SPECIAL ALLEGATION OF SEXUAL MOTIVATION--
18 PROCEDURE. --

19 A. In any criminal case other than those offenses
20 described in Paragraphs (1) through (9) of Subsection I of
21 Section 3 of the Sexual Predator Civil Commitment Act, the
22 district attorney shall file a special allegation of sexual
23 motivation within ten days after arraignment when sufficient
24 admissible evidence exists that, when considered with the most
25 plausible, reasonably foreseeable defense that could be raised

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1 under the evidence, would justify a finding of sexual
2 motivation by a reasonable and objective fact finder.

3 B. In a criminal case in which there has been a
4 special allegation of sexual motivation, the state shall prove
5 beyond a reasonable doubt that the accused committed the crime
6 with a sexual motivation. The court or jury, if it finds the
7 defendant guilty, shall also find a special verdict as to
8 whether the defendant committed the crime with a sexual
9 motivation.

10 C. The district attorney shall not withdraw the
11 special allegation of sexual motivation without approval of the
12 court through an order of dismissal of the special allegation.
13 The court shall not dismiss this special allegation unless it
14 finds that the order is necessary to correct an error in the
15 initial charging decision or unless there are evidentiary
16 problems that make proving the special allegation doubtful.

17 Section 18. CONFIDENTIAL INFORMATION OR RECORDS. -- In
18 order to protect the public, relevant information and records
19 that are otherwise confidential or privileged shall be released
20 to the agency with jurisdiction or the attorney general for the
21 purpose of meeting the notice requirement provided in Section 4
22 of the Sexual Predator Civil Commitment Act and for determining
23 whether a person is or continues to be a sexually violent
24 predator.

25 Section 19. COURT RECORDS. -- Any psychological reports,

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1 drug and alcohol reports, treatment records, reports of the
2 diagnostic center or medical records that have been submitted
3 to the court or admitted into evidence pursuant to the
4 provisions of the Sexual Predator Civil Commitment Act shall be
5 part of the record but shall be sealed and opened only on order
6 of the court.

7 Section 20. INELIGIBILITY FOR BAIL, BOND, HOUSE ARREST OR
8 OTHER RELEASE. --Any person for whom a petition pursuant to
9 Section 5 of the Sexual Predator Civil Commitment Act has been
10 filed and is in the secure confinement of the state shall not
11 be eligible for bail, bond, house arrest or any other measures
12 releasing the person from the physical protective custody of
13 the state.

14 Section 21. COSTS-- RESPONSIBILITY OF SECRETARY. --The
15 secretary is responsible for all costs relating to the
16 evaluation and treatment of persons committed to the
17 secretary's custody under any provision of the Sexual Predator
18 Civil Commitment Act. Reimbursement may be obtained by the
19 secretary for the cost of care and treatment, including
20 placement in transitional release, of persons committed to the
21 secretary's custody who are not indigent by assessing a fee
22 pursuant to Section 43-1-25 NMSA 1978.

23 Section 22. SEVERABILITY. --If any part or application of
24 the Sexual Predator Civil Commitment Act is held invalid, the
25 remainder or its application to other situations or persons

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shall not be affected.

Section 23. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2003.